

ATTACHMENT B

USA v. Michael Alcott - July 20, 2005 - Page 1

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

* * * * *
UNITED STATES OF AMERICA, *
Plaintiff *
*
v. * Criminal No. 04-10286-PBS
*
MICHAEL ALCOTT, *
Defendant *
* * * * *

PLEA

Before the Honorable
United States District Court Judge Patti B. Saris

APPEARANCES:

Office of the United States Attorney
By Assistant US Attorney Jack Pirozzolo
One Courthouse Way
Boston, Massachusetts 02210
for the United States.

Attorney Kevin Barron,
453 Washington Street, Suite 5B,
Boston, Massachusetts 02111-1325
for the Defendant.

Courtroom 19 - 7th Floor
One Courthouse Way
Boston, Massachusetts 02210
July 20, 2005
3:17 to 3:51 PM

Nancy L. Eaton - Per Diem Court Reporter
eatonnanc@cs.com
617-633-5178

USA v. Michael Alcott - July 20, 2005 - Page 2

1 THE CLERK: Please be seated. Case of the United
2 States versus Michael Alcott, Criminal action, 04-10286 will now
3 be heard before this Court. Counsel please identify themselves
4 for the record.

5 MR. PIROZZOLO: Good afternoon, your Honor, Jack
6 Pirozzolo for the Government.

7 MR. BARRON: Kevin Barron for the Defendant Michael
8 Alcott.

9 THE COURT: Why are we here?

10 MR. BARRON: A Rule 11.

11 THE COURT: Have you had a chance to speak to Mr. Alcott
12 about the waiver of the indictment?

13 MR. BARRON: And it has been executed.

14 THE COURT: What is your name for the record, sir?

15 THE DEFENDANT: Michael W. Alcott.

16 THE COURT: And is this your signature on the waiver of
17 indictment?

18 THE DEFENDANT: Yes, it is.

19 THE COURT: Do you understand you have of a right to a
20 Grand Jury indictment?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you understand that you are waiving that
23 right?

24 THE DEFENDANT: Yes.

25 THE COURT: Have you had a chance to discuss this with

USA v. Michael Alcott - July 20, 2005 - Page 3

1 your lawyer?

2 THE DEFENDANT: Yes, I have.

3 THE COURT: And is your waiver, knowing, intelligent and
4 voluntary?

5 THE DEFENDANT: Yes.

6 THE COURT: All right, Mr. Alba.

7 THE CLERK: Mr. Michael Alcott as to count one, of the
8 superseding information charging you with bank fraud, violation
9 of Title 18, United States Code, Section 1344, how do you plead,
10 guilty or not guilty?

11 THE DEFENDANT: Guilty.

12 THE CLERK: As to Counts 2 and 3 charging you with
13 false statements violation of Title 18, United States Code,
14 Section 1014, how do you plead, guilty or not guilty?

15 THE DEFENDANT: Guilty.

16 THE CLERK: As to count four, charging you with Travel
17 Act, violation of Title 18, United States Code, Section 1952,
18 how do you plead, guilty or not guilty?

19 DEFENDANT: Guilty.

20 THE CLERK: Thank you. Please take the witness stand,
21 judge?

22 THE COURT: Continue.

23 THE CLERK: Take the witness stand.

24 Counsel, you can accompany him.

25 (Defendant was sworn by the clerk.)

USA v. Michael Alcott - July 20, 2005 - Page 4

MICHAEL ALCOTT, Sworn

THE COURT: All right. Do you understand that you are now under oath and that if you answer any of my questions falsely, you may later be prosecuted for perjury or making a false statement?

THE DEFENDANT: Yes, your Honor.

THE COURT: What is your full name?

THE DEFENDANT: Michael W. Alcott.

THE COURT: What is your age?

THE DEFENDANT: 44.

THE COURT: How far did you go in school?

THE DEFENDANT: One year of college.

THE COURT: Can you read and write?

THE DEFENDANT: Yes.

THE COURT: Have you read the plea agreement?

THE DEFENDANT: Yes, your Honor.

THE COURT: Have you read the superseding information?

THE DEFENDANT: Yes, I have.

THE COURT: Have you been been treated for mental illness or addiction to narcotic drugs?

THE DEFENDANT: Yes.

THE COURT: Please tell me about it.

THE DEFENDANT: Currently on Prozac, Lithium and Inderal for diagnosis of bipolar and obsessive compulsive disorders, including addictions to alcohol and gambling.

USA v. Michael Alcott - July 20, 2005 - Page 5

1 THE COURT: All right. How do you feel?

2 THE DEFENDANT: Fine.

3 THE COURT: Are you getting the medications that you
4 think you should be getting?

5 THE DEFENDANT: Yes, I am.

6 THE COURT: And Mr. Barron, have you had a chance to
7 get to know Mr. Alcott well enough to know whether he seems well
8 to you?

9 MR. BARRON: Yes, he seems better. I've had six
10 meetings in Plymouth before today and I think his condition has
11 stablized.

12 THE COURT: Are you currently under the influence of
13 any controlled substances that are illegal or any medications
14 that you haven't described?

15 THE DEFENDANT: No.

16 THE COURT: Do you feel in any way as if your attorney
17 has pressured you into pleading guilt?

18 THE DEFENDANT: No.

19 THE COURT: Have you been satisfied with your attorney?

20 THE DEFENDANT: Yes.

21 THE COURT: Has anyone made any promises to you or
22 threats to you apart from the promises in the plea agreement?

23 THE DEFENDANT: No.

24 THE COURT: Has anyone promised you what my plea will
25 be?

USA v. Michael Alcott - July 20, 2005 - Page 6

1 THE DEFENDANT: No.

2 THE COURT: Excuse me, what my sentence will be?

3 THE DEFENDANT: No.

4 THE COURT: Do you understand -- are you a citizen?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you understand a felony offense will
7 deprive you of certain important civil rights, such as the right
8 to vote, the right to hold public office, the right to serve on
9 a jury and the right to possess firearms?

10 THE DEFENDANT: Yes.

11 THE COURT: Now, I am going to ask the government to
12 stand up and state the penalties that can be imposed on these
13 sentences.

14 These charges.

15 MR. PIROZZOLO: Thank you, your Honor. The maximum
16 penalties as to each of the four counts, count one, bank fraud,
17 imprisonment of not more than 30 years, a fine of not more than
18 one million or twice the gross gains to the defendant or gross
19 loss to the victim. Restitution and/or forfeiture, special
20 assessment of \$100 and supervised release of five years.

21 As to counts two and three, imprisonment for not more
22 than 30 years, a fine of not more than one million dollars or
23 twice the gross gains to the defendant or gross loss to the
24 victim, and restitution and/or forfeiture, and special
25 assessment of \$100 and supervised release of five years.

USA v. Michael Alcott - July 20, 2005 - Page 7

1 As to count four, violation of Travel Act, 18 USC
2 Section 1952 with respect to the charges in the information, the
3 maximum penalty is imprisonment of not more than five years and
4 a fine of not more than \$250,000, restitution and forfeiture and
5 special assessments of \$100 and supervised release of not more
6 than five years. Also, penalty enhancement provision that is
7 applicable here under 18 USC Section 3147 and provides for a
8 consecutive term of imprisonment of not more than ten years
9 because count 4 of the superseding information occurred while on
10 pretrial release.

11 THE COURT: Is there a plea agreement?

12 MR. PIROZZOLO: There is, your Honor.

13 THE COURT: Have you signed the plea agreement?

14 THE DEFENDANT: Yes.

15 THE COURT: All right and let me -- did you give that
16 to me? I think I handed it back with the waiver by accident.

17 (Pause).

18 Is there a -- what is the estimated sentencing length
19 that the government has calculated.

20 MR. PIROZZOLO: Your Honor, there are a number of
21 disputed issues set forth in the plea agreement, so I hesitate
22 to give a sentencing range here. I could go through the various
23 adjustments that are at issue with respect to the plea
24 agreement. There is some complexity to what has been agreed to
25 here, your Honor.

USA v. Michael Alcott - July 20, 2005 - Page 8

1 THE COURT: Well, you know, when you hand these things
2 to me up here, I am trying to read it as I am going and I have
3 no idea what this says. Some sort of a waiver of appeal
4 provision?

5 MR. PIROZZOLO: There is, your Honor.

6 THE COURT: So let me just say -- why don't you state
7 for the record what it is.

8 MR. PIROZZOLO: The waiver of the appeal provision?

9 THE COURT: Yes.

10 MR. PIROZZOLO: Yes, your Honor. Under paragraph 7 of
11 the plea agreement, it states that the defendant is aware that
12 he has the right to challenge a sentence and guilty plea on
13 direct appeal. Defendant is also aware that he may in some
14 circumstances be able to argue his plea should be set aside or
15 his sentence set aside and a case on collateral charge, such as
16 pursuant to a motion under 28 USC in Section 2355, and states in
17 consideration and concessions made by the US Attorney in this
18 agreement defendant knowingly and voluntarily waives his right
19 to appeal the collateral challenge. Number one, defendant's
20 guilty plea and any other aspects of defendant's conviction,
21 including but not limited to any rulings on pretrial motions or
22 any of the pretrial dispositions and motions and issues; two,
23 the imposition by the District Court of a sentence which does
24 not exceed that recommended by the US Attorney pursuant to this
25 agreement. It goes on: In consideration and concession --

USA v. Michael Alcott - July 20, 2005 - Page 9

1 THE COURT: You don't have to read the whole -- have
2 you read it to him?

3 MR. BARRON: Yes, I have, and the significant thing in
4 this actual provision, the bargained for provision, is that the
5 competency of counsel has been specifically excluded. I will
6 not have a defendant sign a waiver right that -- where he waives
7 his right to challenge the competency of his attorney.

8 THE COURT: You don't mean competent. You mean
9 effective.

10 MR. BARRON: Effective assistance of counsel.

11 THE COURT: I am assuming you are competent.

12 MR. BARRON: He has a Sixth Amedment challenge --

13 THE COURT: Fair enough.

14 MR. BARRON: And I say competency because it is a
15 broader issue.

16 THE COURT: So let me, you know what is useful in the
17 future? I know you are relatively new to each other and it is
18 such a complicated plea to give me a copy in advance.

19 MR. BARRON: That is in part my fault. It is a
20 somewhat complicated plea agreement and we've gone back and
21 forth and we had essentially a plea agreement but it is a
22 question of getting it up here.

23 THE COURT: Even 15 minutes in advance is useful. I am
24 just reading it as we are going. Let me ask this. So what is
25 your recommended sentence?

USA v. Michael Alcott - July 20, 2005 - Page 10

1 MR. PIROZZOLO: Well, our recommended sentence is going
2 to be within the guidelines range as set forth under the various
3 calculations --

4 THE COURT: I want to give him a sense of what at this
5 point, not what I am going to rule, but what you think that you
6 are going to recommend.

7 MR. BARRON: Anywhere from 77 to 100 --

8 MR. PIROZZOLO: It could be from 77 up to 137 months.

9 THE COURT: Depending on how it is done.

10 Mr. PIROZZOLO: It really depends on how it is
11 calculated and I hesitate to give a range because there are so
12 many open issues in the plea agreement, it could very well
13 change if you advise him there is a cap and probation comes back
14 --

15 THE COURT: Don't worry. I'm going to tell him about
16 that, but right now your preliminary -- your preliminary
17 estimates, puts it at bottom of 77 months?

18 Mr. PIROZZOLO: Approximately, yes, your Honor.

19 THE COURT: All right. What are your preliminary
20 estimates?

21 MR. BARRON: 77 months would be the bottom estimate.
22 There would be questions about how much penalty he is to receive
23 grouping -- there may be some grouping issues.

24 THE COURT: Sure.

25 MR. BARRON: There may be issues about the enhancement,

USA v. Michael Alcott - July 20, 2005 - Page 11

1 but that is all, we've understood that --

2 THE COURT: All right.

3 MR. BARRON: Will also be a limited right to seek a
4 departure on mental health issues.

5 THE COURT: Fine.

6 MR. BARRON: That will be preserved.

7 THE COURT: Do you understand that is going to be a
8 complicated sentencing and what I am going to do is send it to
9 the probation office, which will recommend a sentencing
10 guideline range, and then both of these attorneys are telling me
11 that there are many moving parts and they are not sure exactly
12 where the sentence will end up but -- and that we'll have a
13 whole hearing about that and the government can object and
14 counsel can object and I will set a sentencing guideline range.
15 Do you understand that?

16 THE DEFENDANT: Yes, I do, your Honor.

17 THE COURT: And then what I am going to do because it
18 is advisory, I will consider attorney's request that I go down
19 from that range because of mental health issues. Do you
20 understand that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: He has limited himself to asking for that,
23 is that right?

24 MR. BARRON: Well, that's what the bargain ended up to
25 be with Mr. Pirozzolo.

USA v. Michael Alcott - July 20, 2005 - Page 12

1 THE COURT: The bargain he is going to push hard for
2 variance or departure on mental health issues. Do you
3 understand that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: And at the conclusion of all that, I make
6 an assessment whether the sentence is reasonable because the
7 guidelines are only advisory. Do you understand that?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: All right. So this is going to be
10 relatively messy, but under both sides' calculations, it looks
11 likely that the bottom end of the guideline range will be in the
12 vicinity of 77 months. Do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: All right. Is that accurately stating it?

15 Mr. PIROZZOLO: That's correct.

16 THE COURT: You have waived most of your rights to
17 appeal but there are are some residual rights permitted under
18 paragraph 7. Have you had a chance to discuss that with your
19 attorney?

20 THE DEFENDANT: Yes.

21 THE COURT: All right. I think that would be better
22 than my trying to synopsise it at this point. Now, what I am
23 going to do is tell you that apart from whatever you've waived,
24 you will have the right to appeal certain sentencing issues if
25 you think I am in error, but you cannot withdraw your guilty

USA v. Michael Alcott - July 20, 2005 - Page 13

1 plea. Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: All right. Now, going to the rights that
4 you have given up by pleading guilty, do you understand you have
5 a right to an attorney at trial?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you understand you have a right to a
8 trial?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you understand you have of a right to
11 trial by jury?

12 THE DEFENDANT: Yes.

13 THE COURT: And 12 citizens chosen at random from the
14 community to look at the evidence in this case and decide
15 whether the government has proven its case beyond a reasonable
16 doubt. You understand you've given that up?

17 THE DEFENDANT: Yes.

18 THE COURT: You understand the jury has to decide that
19 unanimously, 12 out of 12?

20 THE DEFENDANT: Yes.

21 THE COURT: Understand the government always has the
22 burden of proof beyond a reasonable doubt and never shifts to
23 you?

24 THE DEFENDANT: Yes.

25 THE COURT: Understand you're giving up this

USA v. Michael Alcott - July 20, 2005 - Page 14

1 presumption of innocence?

2 THE DEFENDANT: Yes.

3 THE COURT: Understand there is a privilege against
4 self-incrimination which means do you not have to testify
5 against yourself.

6 THE DEFENDANT: Yes.

7 THE COURT: On the other hand, do you understand that
8 you would have to right to testify on your own behalf if you
9 chose to do so?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you understand you have the right to
12 confront, to see all witness against you and to cross-examine
13 them?

14 THE DEFENDANT: Yes.

15 THE COURT: And on the other hand you have a right to
16 subpoena witness on your own behalf?

17 THE DEFENDANT: Yes.

18 THE COURT: And understanding all these extremely
19 important constitutional rights, do you still want to plead
20 guilty?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Now, there is quite a bit here, so I
23 basically have been following this case, as we all know, over
24 time. I have basically lumped together all the charges as I
25 understand it and it is all in the superseding information; is

USA v. Michael Alcott - July 20, 2005 - Page 15

1 that right?

2 MR. PIROZZOLO: That's correct, your Honor.

3 THE COURT: I think for ease of taking this plea, I
4 suggest what do you is you start with the -- each cluster, and
5 I'll ask him if he pleads guilty to that because we have bank
6 fraud, obstruction and we have the Travel Act; and I'll add for
7 you that I'm not sure I have ever taken a plea to a Travel Act,
8 so it would be useful me a little bit to have your understanding
9 of what the elements of that are.

10 Mr. PIROZZOLO: I will do that, your Honor.

11 Starting with the bank fraud there are three counts
12 relevant to the bank fraud. There is one bank fraud count under
13 Section 1344 and there are two false statements in connection
14 with loan applications and counts two and three relate to those.
15 The factual basis as to those charges is really offered as a
16 group are as follows: Mr. Alcott was the founder and president
17 of Ark Associates which did business as Accounting Recruiters
18 International.

19 On or about 2000 Mr. Alcott and Ark Associates entered
20 into a relationship with South Shore Savings Bank. He
21 established a line of credit. The line of credit was initially
22 established at \$500,000. Over time credit increased up to 2.5
23 million dollars. In order to induce the bank to increase the
24 line of credit, Mr. Alcott submitted false and fraudulent
25 financial statements to South Shore Savings Bank. The false and

USA v. Michael Alcott - July 20, 2005 - Page 16

1 fraudulent statements included statements for the fiscal years
2 2000, 2001 and 2002. With respect to the 2002 statement, Mr.
3 Alcott was required to estimate a financial statement that was
4 audited by and independent accounting firm. Previously he had
5 only been required to supply a reviewed statement which is a
6 lower level of scrutiny. With respect to the audited financial
7 statement, he was unable to obtain an audited financial
8 statement and instead submitted a false and fraudulent audited
9 financial statement with a false letter purporting to be from an
10 accountant Mr. David P. Kane of an entity called KPM Associates.

11 KPM actually is a real accounting firm. David Kane,
12 however, was a fictitious person. Eventually it was discovered
13 that in fact Mr. Kane did not exist; and South Shore when it
14 learned of the fact, foreclosed on a line of credit. However,
15 at that time the balance, the outstanding balance was 2.496
16 million dollars. Shortly before -- that is counts one and two.
17 Shortly before South Shore discontinued --

18 THE COURT: Which -- you are still staying on the same
19 cluster?

20 Mr. PIROZZOLO: I am. Thank you. Count 3 relates to
21 an event that forced South Shore to foreclose on the line of
22 credit. Shortly before South Shore called the loan, Mr. Alcott
23 had submitted an application to Boston Private Bank and Trust
24 Company for a 3.5 million dollar line of credit. And he
25 provided the same false and fraudulent financial statements with

USA v. Michael Alcott - July 20, 2005 - Page 17

1 the fabricated letter from David Kane also to Boston Private
2 Bank and Trust Company. He never obtained the loan after South
3 Shore called the loan. Boston Private Bank was notified and
4 they did not extend the credit. However, there is a false
5 statement in connection with the loan application and that
6 serves as the basis for count 3.

7 In the information there are set forth acts of
8 obstruction of justice --

9 THE COURT: Those relating to the bank fraud?

10 Mr. PIROZZOLO: They do; and if I could just explain,
11 your Honor, they are not separately charged. They are not
12 separately charged as separate counts in the information.
13 Rather they are set forth in the information because they will
14 be relevant to an obstruction of justice enhancement we
15 anticipate.

16 THE COURT: I don't see why you need go through those
17 now. Do you agree?

18 MR. BARRON: I agree.

19 THE COURT: All right.

20 Mr. PIROZZOLO: Your Honor --

21 THE COURT: Not done with the bank fraud?

22 Mr. PIROZZOLO: I am finished -- I just want to just
23 alert you that alleged in the information are two separate
24 instances of obstruction. There is the first obstruction which
25 relates to the letter that you received and a second which the

USA v. Michael Alcott - July 20, 2005 - Page 18

1 government contends is the second instance --

2 THE COURT: Those are separate counts?

3 Mr. PIROZZOLO: They are not counts. They are charged
4 and in the information.

5 THE COURT: Why do I need to take them? Under Blakely
6 do you want to plead to them?

7 MR. BARRON: I don't believe that's necessary. We're
8 simply admitting to the factual allegations and the AUSA I
9 believe is proceeding correctly, as I understand Booker, as it
10 looks back at Blakely, through a lens that he should be
11 mentioning at least some of these facts that could be -- could
12 possibly be viewed as the need for some kind of separate charge
13 and being admitted as facts; and in the context of the plea
14 agreement, that's all that is necessary -- or in context of Rule
15 11 I should say.

16 THE COURT: Do you want him to plead to the
17 obstructions?

18 Mr. PIROZZOLO: Yes, although they are not separately
19 charged counts.

20 THE COURT: I thought what that is what Booker said I
21 didn't have to do.

22 MR. BARRON: I agree with your Honor.

23 Mr. PIROZZOLO: I do want to make clear, however, here,
24 what are the components of the information so there is no
25 question what is the component of the document that he is

USA v. Michael Alcott - July 20, 2005 - Page 19

1 pleading to, your Honor.

2 MR. BARRON: Admitting to.

3 Mr. PIROZZOLO: Admitting to, excuse me.

4 THE COURT: Well, I am -- right now I am just going to
5 take the counts. Just not going -- all right. Since you've
6 read the superseding information, I am moving right onto count
7 1.

8 Do you plead guilty to at least on or about July 13th,
9 2000 to on or about July 1, 2003, that you did knowingly execute
10 and attempt to execute a scheme and artifice to defraud South
11 Shore Savings Bank, a financial institution in violation of 18
12 USC Section 1344(1)?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Do you plead guilty knowingly, freely and
15 voluntarily?

16 THE DEFENDANT: Yes.

17 THE COURT: Did you know that letter saying that the
18 statement was audited was a fraud?

19 THE DEFENDANT: Yes.

20 THE COURT: With respect to count 2, do you plead
21 guilty to on or about May 2003 that you did knowingly make a
22 false statement for the purpose of influencing South Shore
23 Savings Bank, an institution the accounts of which are insured
24 by the Federal Deposit Insurance Corporation upon a loan and any
25 change and extension of a loan by renewal, deferment of action

USA v. Michael Alcott - July 20, 2005 - Page 20

1 and otherwise in the acceptance, release and substitution of
2 security therefore in violation of 18 USC Section 1014, do you
3 plead guilty to that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: And with respect to count 3, do you plead
6 guilty to on or about June 3rd, 2003, that you did knowingly
7 make a false statement for the purpose of influencing Boston
8 Private Bank and Trust Company, an institution the accounts of
9 which are insured by the Federal Deposit Insurance Corporation
10 upon an application for credit in violation of 18 USC Section
11 1014? Do you plead guilty to that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Knowingly, freely and voluntarily. Now do
14 you disagree with any of the obstruction acts or do you want to
15 contest those at the sentencing?

16 MR. BARRON: There is contest to the second obstruction
17 act at the sentencing.

18 THE COURT: All right. As I understand that, I decide
19 that and will decide it by a preponderance of the evidence, I
20 will find the guideline range. I will address the departure and
21 separately decide whether or not that is a reasonable sentence
22 because they are advisory. So I don't need a plea to the
23 obstructions if they are not separate counts and separate
24 charges.

25 Now, move on to the Travel Act which is count 4.

USA v. Michael Alcott - July 20, 2005 - Page 21

1 And in fairness to you, I understand different judges
2 are dealing with this differently, but I would say the vast
3 majority of judges have put a stake in the ground. It is a
4 preponderance standard. And the Circuits.

5 Mr. PIROZZOLO: Okay. Thank you, your Honor. With
6 respect to count 4, which is the Travel Act violation, I will
7 talk first about the factual basis and then I'll address the
8 elements of the offense.

9 The Government would prove that in or about February of
10 2005 Mr. Alcott engaged in a scheme to extort \$150,000 from a
11 California man who works as a doctor. More particularly, the
12 Government would show that Alcott threatened to disclose the
13 doctor's sexual relationship with a woman who had been a
14 prostitute if the doctor did not pay him \$150,000.

15 Although the victim and Mr. Alcott didn't know each
16 other, they had each been clients of this woman who had acted as
17 an escort; and in February, 2005, Mr. Alcott sent by Federal
18 Express to the doctor's work address a letter which represented,
19 under a pseudonym, Philip Edwards, from Boston, that he had been
20 hired as a private investigator and had come to realize that his
21 client was going to use information that he had gathered against
22 the doctor to ruin him.

23 The letter goes on to state various things including
24 that he has pictures from adult websites showing the escort and
25 that he has proof that the doctor had met the escort while

USA v. Michael Alcott - July 20, 2005 - Page 22

1 visiting his daughter. And he went on to say that the
2 information that he had could bring him down and that the bottom
3 line is that he spent a lot of time tracking down the dirt in
4 people's lives and then see it used to destroy them. He then
5 said that if you pay me more than my client, then only make this
6 information disappear. I'll share some useful information with
7 you.

8 Subsequently and subsequent communications which were
9 done via e-mail, Mr. Alcott requested that \$150,000 retainer be
10 sent to a bank account that Mr. Alcott had set up in Atlanta and
11 there were, in addition to the e-mails and the Federal Express,
12 there was also interstate telephone calls that were placed to
13 the doctor's residence and cell phone.

14 In March of 2005 -- well at the end of 2005, the doctor
15 informed the escort that he was going to report the incident to
16 the police and then the communication ceased. Subsequently in
17 March 2005 the escort, the woman, forwarded to the doctor an
18 e-mail from Alcott that had said that he had been in love with
19 the escort and he hoped to start a life together and explain the
20 extortionate scheme, being under federal indictment and attached
21 a press release that had announced bank fraud charges being made
22 against him.

23 Now, with respect to the precise charge, the Travel Act
24 provides, whoever travels in interstate or foreign commerce, or
25 uses the mail for any facility of interstate foreign commerce

USA v. Michael Alcott - July 20, 2005 - Page 23

1 with the intent to promote, manage, establish, carry on,
2 facilitate the promotion, management, establishment or carrying
3 on of any unlawful activity; and the term unlawful activity
4 under the Travel Act includes extortion in violation of the laws
5 of the state in which committed; and in this case the state in
6 which the act was committed was Massachusetts. Massachusetts
7 has a statute Mass. General Laws Chapter 265, Section 25, which
8 criminalizes extortion and under Commonwealth versus Miller,
9 which is an SJC decision, the SJC held that threats to expose a
10 person's sexual activities or sexual practices comes within the
11 scope of Chapter 265, Section 25.

12 THE COURT: Thank you. Anything you disagree with
13 about that?

14 THE DEFENDANT: No, your Honor.

15 THE COURT: Anything you disagree with any of the
16 statements that the prosecutor has made so far about the
17 evidence?

18 THE DEFENDANT: No.

19 THE COURT: So I'm not going to read the whole Travel
20 Act. Do you plead guilty to in or about February 2005 that you
21 did knowingly travel in interstate commerce and use the mails
22 and the facility in interstate commerce with the intent to
23 promote, manage, establish, carry on or facilitate the
24 promotion, management, establishment or carrying on of an
25 unlawful activity, to wit, extortion, in violation of Mass.

USA v. Michael Alcott - July 20, 2005 - Page 24

1 General Laws, Chapter 265, Section 25 and in violation of 18 USC
2 Section 1952. Do you plead guilty to that?

3 THE DEFENDANT: Yes.

4 THE COURT: And did you commit this offense while you
5 were under pretrial release?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you plead guilty knowingly, freely and
8 voluntarily?

9 THE DEFENDANT: Yes.

10 THE COURT: All right. Do you have any other questions
11 for your attorney or me because I am about to accept this plea?

12 THE DEFENDANT: No.

13 THE COURT: I find your plea is knowing and voluntary
14 supported by independent basis in fact and has the essential
15 elements and I accept it. It sounds like this is a messy
16 sentencing and I should probably give it at least an hour or
17 more.

18 MR. PIROZZOLO: I would say at least that, your Honor.

19 THE COURT: What are you thinking?

20 MR. BARRON: Two a half. I think it could take an
21 afternoon.

22 THE COURT: Am I likely to hear evidence? What am I
23 likely to hear?

24 MR. PIROZZOLO: There are some legal issues that have
25 been raised by the plea and there may be some evidentiary issues

USA v. Michael Alcott - July 20, 2005 - Page 25

1 that we may need. There is an expected motion regarding mental
2 health and that may take some time.

3 MR. BARRON: That is why I would say more than an hour
4 possibly if there is a need to take the testimony of an
5 independent forensic psychologist or forensic psychiatrist. The
6 defense would offer one and possible the government possibly
7 also. So --

8 THE COURT: Block off an afternoon.

9 MR. BARRON: I will inform the court if it looks like
10 we are not going to have an evidentiary hearing and we may be
11 deciding it on papers.

12 THE CLERK: Sentencing would be October 21st at 2 PM.

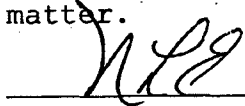
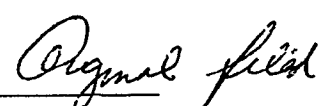
13 MR. BARRON: Yes, your Honor.

14 THE COURT: Okay.

15 (Court remained in session on other matters at 3:51
16 PM.)

17 **C E R T I F I C A T I O N**

18 I, Nancy L. Eaton, certify that the foregoing is a correct
19 transcript from the record of proceedings in the above-entitled
20 matter.

21  

22 Nancy L. Eaton, Court Reporter

November 30, 2006

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